

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 12565 of 2004

Between:

M/s Prasad Media Corporation Limited, D.No. 6-1-38/1, NTR Garden Marg,
Hyderabad, Rep. by its General Manager (Finance), Mr. K.V. Mahadevan S/o Sri
K.V. Vilvanathan.

.... PETITIONER

AND

1 The Government of Andhra Pradesh, rep. by its Secretary,
Municipal Administration & Urban Development Department

Secretariat, Hyderabad.

2 The Commissioner, Municipal Corporation of Hyderabad,

Tank Bund, Hyderabad.

3 The Advertisement Officer, Municipal Corporation of

Hyderabad, Tank Bund, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially in the nature of writ of mandamus declaring the action of the third Respondent in demanding advertisement fee and EMD under the provisions of Section 421 of HMC Act, 1955, without regard to the facts of the case as being illegal, arbitrary and consequently set aside the notice dated 12th July, 2004 ,

Counsel for the Petitioner: MR.S.RAVI

Counsel for the Respondent No.1: The G.P. for Municipal administration.

Counsel for the Respondents 2 and 3: SMT.G.JYOTHI KIRAN

The Court made the following:

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for Municipal Corporation of Hyderabad. Both the counsel have stated that they have no objection to dispose of the writ petition. Hence, the writ petition is taken up for disposal.

The petitioner, who has constructed Imax theatre and Multiplex theatres and an entertainment complex on a plot of 2 acres of land, which is taken on lease from the Government of Andhra Pradesh for a period of thirty three years, which is exhibiting motion pictures in the said theatres, was served with impugned notice, dated 12.07.2004, under Section 421 read with Section 622 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), informing that the advertisement of Vinyl/Board is/are erected/exhibited by the petitioner was without obtaining prior written permission from the Commissioner, MCH, by paying advertisement fees, as required under Section 421 read with Section 622 of the Act and the rules made thereunder, and accordingly, called upon him to pay an amount of Rs.2,95,630/- (requisite advertisement fee and EMD) for regularizing of Sky-sign through Form-I, within (3) days from the date of receipt of that notice, failing which, it is stated that action will be initiated as per the provisions of the Act. Questioning the same, the present writ petition is filed contending that the petitioner sent a detailed representation on 14th July, 2004, analyzing the provisions of sections 420 and 421 of the Act and as to how the same would not apply to it. It is stated therein that a reading of the definition 'Sky Sign' in Section 420 of the Act clearly indicates that any board or sign, which is fixed to the wall of the building will not be regarded as Sky Sign. Further, it is stated that Section 421 of the Act clearly excludes the advertisement on the building, which relates to the merchandise or service that a trader vends within the premises of the building, on which such hoarding is erected, and that the lighting exhibited by it was only adequate to make the hoarding visible and that it was not excessive. It is contended that in spite of the same, he was called upon by the Additional Commissioner on 15th/16th July, 2004, and was informed that

if the amounts are not paid on or before 21st July, 2004, the hoarding will be pulled down in the gaze of the public and the press. The same, according to the petitioner, is arbitrary and illegal, and as such, he seeks a *Writ of Mandamus* to restrain the respondents from demanding the said fees.

Counter affidavit has been filed by respondents 2 and 3 stating that the petitioner has created (5) boards of the following sizes with illumination.

1. (20ft X 40 ft) X 3 Nos. on north western side.
2. (35ft X 35 ft) x 2 Nos. on western side.

It is contended by the respondents that though the petitioner states that the boards are created on the wall of the theatre at certain height from the roof and no part of the said Boards project outside of the building or is open to sky and visible against the sky, it is clear from Sections 420 and 421 of the Act that the display of posters of the cinemas either printed on Vinyl or painted on the boards come under the meaning of advertisement. It is further contended that as per Section 420(1) of the Act no person shall without written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not upon any land, building, wall, hoarding or structure. Since the petitioner has erected (5) boards in violation and contravention of the provisions of the Act, the respondent Corporation is entitled to charge the advertisement fees. The exemption given under Section 420(3)(b) of the Act is only to the boards of the nature of any sign, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building or on the cornice or blacking cornice of any wall or to the ridge of the roof, which shall not come under the definition of 'Sky sign', but the proviso to the Section further brings some exceptions to the exemption given under Section 420(3) of the Act, and if such board, frame or other contrivance be of one continues face and not opened to work and do not extend, in height more than 3 ft. above any part of wall or parapet or ridge to which, against, or on which it is fixed or support, such board or frame etc., come under the definition of Sky sign. Since all the advertisements illuminated are liable for advertisement fees under Section 421 of the Act, the impugned notice was issued calling upon the petitioner to pay the requisite advertisement fee and the EMD, as per schedule of rates approved by the Corporation vide resolution dated 09.07.1999, to regularize the advertisement.

Learned counsel for the petitioner placing reliance on proviso to Clause (b) of Sub-Section (3) of Section 420 of the Act contends that unless any such board, frame or other contrivance be of one continuous face and not open to work and do not extend, in height more than three feet above any part of the wall, or parapet or ridge to which, against, or on which it is fixed or supported, that cannot include the expression of Sky sign, and hence, the petitioner is entitled to the benefit of Sub-Section 4(b) of Section 421 of the Act. As what is shown in the advertisement is only the cinemas, which are exhibited in the theatres, it will not fall within the definition of advertisement and the impugned notice is liable to be set aside.

On the other hand, learned standing counsel for the respondents-Corporation contends that all the (5) boards erected by the petitioner on the wall of the building are more than the height of 3 ft. and the same are visible against the sky from all parts in the street. In view of the same, the advertisement board falls within the definition of Sky sign and is liable to pay the advertisement fees. Once the said advertisements are illuminated, they attract Section 421 of the Act. It is further contended that when the representative of the petitioner personally approached them, they explained him as to how the written permission for their boards is required by duly paying the advertisement fees, and hence, it cannot be said that the impugned notice was issued illegally.

Sections 420 and 421 of the Act regulates the exhibition of Sky signs and advertisements. A written permission has to be obtained to erect, fix or retain any sky-sign. Section 420(1) envisages that no person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign, whether now existing or not, and no such written permission shall be granted, or renewed, for any period exceeding two years from the date of each such permission or renewal. Section 420(3) postulates that if any sky-sign be erected, fixed or retained contrary to the provisions of this Section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign. The expression 'sky-sign' is also defined in the said section, as under:

“The expression “sky-sign” shall in this section mean any word, letter model, sign, devise or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole,

standard framework or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard, framework or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include-

- a. any flagstaff, pole, vane or weathercock, unless adopted or used wholly or in part for the purpose of any advertisement, announcement or direction;
- b. any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blacking course of any wall, or to the ridge of a roof;

Provided that such board, frame or other contrivance be of one continuous face and not open work and do not extend, in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported."

Section 421 of the Act regulates and controls the advertisements. No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure. As per Clause (b) of Sub-Section (4) of Section 421 of the Act, the expression "illuminated advertisement" shall not include an illuminated display of goods if such display of goods is clearly bearing labels showing the name of the article or of its manufacturer or of both, and is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

This Court in **ASIAN PAINTS INDIA LIMITED, MUMBAI v. ADDITIONAL COMMISSIONER (FINANCE) MUNICIPAL CORPORATION, HYDERABAD** considered the said proviso in para "9" and observed that the exemption granted by it shall not extend to any of the categories of advertisement mentioned in the proviso to sub-Section (1) of Section 421 of the Act.

In the counter filed by the respondent Corporation it is categorically asserted that all the (5) boards erected by the petitioner on the wall of the building are more than the height of 3 ft. and the petitioner cannot claim any such exemption in view of the

proviso to Section 420(3)(b) of the Act. Further, all the illuminated (5) boards of the petitioner, on which cinema advertisements are being displayed by the petitioner are visible from all parts of the street and does not come under any of the above criteria for granting exemption of seeking permission. The said fact has not been controverted by filing any reply. Hence, the same is presumed to be admitted.

In view of the fact that the petitioner already submitted his explanation to the notice, the Commissioner shall pass appropriate orders on the explanation so offered by the petitioner in the light of Section 421 (4) (b) (ii) of the Act, and communicate the same to the petitioner. On such communication, the respondent-Corporation to take appropriate action for due recovery of the amount or for removal of the sign boards, as the case may be.

The writ petition is accordingly disposed of. No order as to costs.

A.GOPAL REDDY, J

Dated : 23rd September, 2004.

To

- 1 The Secretary, Government of Andhra Pradesh,
Municipal Administration & Urban Development Department

Secretariat, Hyderabad.

- 2 The Commissioner, Municipal Corporation of Hyderabad,
Hyderabad.

- 3 The Advertisement Officer, Municipal Corporation of
Hyderabad, Tank Bund, Hyderabad.

4. 2CD copies

5. Two CCs to the G.P. for Municipal Administration, High Court
of A.P. Hyderabad (OUT).

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